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PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

MARK GREEN
Public Advocate

January 30, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 94-129
Ex Parte Presentation

Dear Secretary Salas:

Please include in the public record the following letter to FCC Chair Kennard. The letter makes recommendations on ways to stop telephone slamming. Pursuant to 47 CFR § 1.1206, we have supplied two copies for the record.

Sincerely,

Justin Martin

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William E. Kennard
Chair
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: CC Docket No. 94-129

Dear Chair Kennard:

The Commission's Notice of Proposed Rulemaking issued July 15, 1997 asks whether "slammed" consumers should be liable for any unpaid charges assessed by unauthorized carriers. I am writing to urge that the Commission fully absolve slammed customers from having to pay one cent to unauthorized carriers. Slammers should not be permitted to profit from their misdeeds. A basic consumer principle should apply: you shouldn't have to pay for something you didn't order. The government has an opportunity to let market forces stop this practice. If you take out the profit, slamming will stop.

On October 5, 1996, my office released and sent to former Chair Reed Hundt a report on long-distance service "slamming" entitled *New Yorkers Keep Getting "Slammed."* We found that despite various Federal and state efforts to combat it, slamming was growing more prevalent and that slammers had adopted forgery of Letters of Agency (LOAs) as their preferred technique.

The slamming problem has continued to worsen since I released my report. While my office received 36 slamming complaints in 1996, in the succeeding year we logged 84 complaints, a 133% increase. I understand that the FCC has seen a 43% increase in complaints in the same period.

Slammers are extremely persistent. Nothing seems to stop them. Among the New Yorkers who contacted my Office:

- Several complainants said the same company slammed them over and

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over again. AT&T slammed Arthur L. four times and Peggy M. three times in the last two years. After each slamming, Ms. M told AT&T to remove her name from marketing lists and never to call or write to her again.

- Most complaints document deliberate forgery of LOAs by both long-distance and regional carriers. For example, when one constituent contacted the long-distance carrier that switched her without authorization, they told her that her husband had signed the authorization for the switch, but her husband had been dead for 12 years. The company had found his name in the phone book; the phone book listed the constituent's home number under her husband's name. In another complaint, a customer's dead grandfather "authorized" the switch.

- Jacquelyn G. put a "preferred carrier freeze" -- the customer must affirmatively call Bell Atlantic to authorize any changes in long-distance service -- on her long distance account after AT&T slammed her. AT&T still managed to slam her anyway. Only after she called Bell Atlantic and was assigned a personal identification number did the slamming stop. However, this didn't stop AT&T from trying. She recently received a notice from AT&T that although she had "requested" a switch, Bell Atlantic would not let the authorization go through. She requested, and AT&T sent her, a copy of the LOA, which was forged.

- AT&T told Ronni Myers that they made an honest mistake when they accepted as valid authorization the signature of "Carmine Garcia" in "Manhattan, NY." AT&T wrote to Ms. Myers: "It is evident that there was some mishap as the form shows a customer name and address other than your own while the telephone number is exactly the same." But if AT&T had called the number to verify the switch, they would have discovered the "mistake." If they had mailed a verification to the address on the LOA it would have been returned because the street address listed as Ms. Garcia's on the LOA doesn't even exist.

- Some forgeries are so blatant that there is no excuse for failing to immediately detect them; obviously, no attempt is made by the long-distance company to do so. For example, a Letter of Agency for LDS Long-Distance Services correctly printed the name "Sab***yas***achi Dastid***a***r" but then they signed the customer's signature on the same form incorrectly as "Sab***ay***achi Dastid***o***r."

Current efforts to stop slamming are entirely inadequate:

- In 1997, the FCC imposed only $245,000 in fines, through either consent decrees or notices of forfeiture. The fines ranged from $15,000 to $80,000 per company. Some companies view such small financial penalties as just another cost of doing business.

- Since 1994, the FCC has imposed a total of only $1.4 million worth of fines. In an industry with annual revenues in excess of $20 billion, this amount is trivial and inconsequential.

Slamming also places a needless administrative burden on the FCC and local regulatory agencies. As the FCC's experience with the Fletcher Companies shows, tracking down and prosecuting slammers is difficult and time-consuming. According to FCC documents and complaints to my Office, the Fletcher Companies were prolific slammers and used forged LOAs to authorize switches. As you know, the companies failed to respond to your enforcement division even though your staff tried various ways to contact the firms. The Commission's Order to Show Cause against the companies summarized the difficulties: "The [Fletcher Companies'] responses appear designed to further mislead the Commission and to frustrate the staff's efforts to obtain information about the Fletcher Companies and their practices toward consumers..." For instance, the return addresses the companies used were mere post office boxes and when notices were sent to these boxes the letters were returned marked "Unclaimed, Moved or Refused."

New York's Public Service Commission (PSC) will be authorized to impose a $1,000 per-slamming fine starting January 20, 1998. The fines may prove a deterrent if they are imposed so frequently that the total fines come to millions of dollars per company. But to do so could be very administratively burdensome. There is the problem of locating some companies, as the Fletcher Companies experience shows. And the PSC is in the same legal predicament as consumers: they bear the burden of proof and must prove a negative -- that the customer did not authorize a switch.

Clearly, the only way to end slamming is by making this practice uneconomical by absolving consumers of the obligation of paying even one penny to unauthorized carriers. The Commission's current remedy -- the consumer must pay the slammer the amount he or she would have paid the authorized carrier -- is unworkable and impractical.

Absolving slamming victims of liability for all charges is also the position of the National Association of Attorneys General (NAAG). To deter customers from falsely claiming that they were slammed and faced major financial consequences, NAAG proposes that customers must report instances of slamming within a specified period of time. Even without a time limit on reporting, long distance carriers in possession of a consumer's valid authorization to switch the service can use the courts to recoup the money owed. The burden of proof would then be on the carrier, though they would not have to prove a negative.

Slamming is not a new phenomenon. For years, regulators have been trying to curb or eliminate it, always unsuccessfully. I am concerned that with the recent deregulation of regional calling, the incentives and opportunities to slam will only increase. I urge you to take the strong action that I and the Attorneys General recommend to stop this abuse once and for all.

Sincerely,

Mark Green

Mark Green

cc:
Magalie Roman Salas
Secretary, Federal Communications Commission
1919 M Street, NW
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